No. 10,095

In the United States
Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA, Appellant,

-vs-

B. W. ALEXANDER, BECKWITH MERCANTILE COMPANY, a Montana Corporation, JOHN A. HAZEL, THEODORE KNUTSON and EDNA I. KNUTSON, his wife, P. W. SORENSON, AVERY A. STEVENS, MEIL C. PIERCE, BERT LISH, BERT MYERS NELSON, JOHN ELLIS, J. A. McKEEVER, AXEL ERICKSON, JOHN MINESINGER and ADA B. MINESINGER, his wife, and THOMAS WALD,

Appellees,

and

FLATHEAD IRRIGATION DISTRICT, a corporation, and DENNIS A. DELLWO,

Appellants,

-vs-

B. W. ALEXANDER et al,

Appellees.

Upon Appeal from the District Court of the United States for the District of Montana

BRIEF FOR APPELLEES

LLOYD I. WALLACE
Polson, Montana
Attorney for Appellees

MISSOULIAN

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APPELLEES' STATEMENT OF CASE

Appellees regard the statement of the case as made on behalf of appellants, Flathead Irrigation District and Dennis A. Dellwo, as inaccurate in several particulars and misleading in others and, also, incomplete. For instance:

At page 8 of said appellantts' brief, it is said: "The Flathead Irrigation District .... will, upon final collection of the cost of construction of the system from the farmers who own lands in the District, become the owner of the Flathead Irrigation Project." The Flathead Irrigation District will only become the owner of that portion of the Protject located within that particular District. The Mission Irrigation District and the Jocko Irrigation District will, likewise, become the owners of those portions of the Flathead Irrigation Project located within such Districts respectively.

Again at Page 8 it is said: "The defendants are all successors in interest of Indian allottees." The defendants, John Minesinger and Ada B. Minesinger, are Indians and allottees. The Complaint in Intervention was dismissed as to them but they are still defendants in the original Bill of Complaint filed by the United States.

Also, at page 14, it is said: "All parties using water under the Project system, regardless of their location on the reservation, pay alike for water (R. 403) and receive, as nearly as possible, equal amounts." The record shows that the operation and maintenance costs vary between the Flathead Irrigation District and the Mission Irrigation District principally on account of the fact that the administrative expenses vary and that the collections vary in the two Districts by reason of delinquencies in payments. (R.

415). The record also shows that, while the farmers pay equal amounts for water received, yet some farmers receive one and one-half to two times as much water as another and sometimes more, and yet pay the same amount of money. In other words, it has been the policy of the Project to deliver twice as much (or more) water to farmers owning lands containing gravelly soils as it does to those farmers owning lands containing tighter soils and this policy has been general throughout the entire Project (R. 416 and 423 to 429 inclusive). This is not, by any means, a "just and equal distribution" but is a discrimination. This policy or practice of discrimination has caused considerable dissatisfaction over the system (R. 425).

Also it is stated at Page 15 of appellants' brief, "The defendants .... have actually, by the removal of dams, prevented the Project employees from administering the water (R. 452)." It was not in the evidence and it is not in the record that the defendants, or any of them, removed any dams (R. 452).

The Duncan McDonald allotment, No. 561, now owned by the appellee, B. W. Alexander, lies higher up on the mountain side and above the Pablo Feed Canal and none of said land can be irrigated except with water diverted to it from Post Creek, through the McDonald-Deschamps ditch. (R. 533-534).

There is no Government ditch from which the north thirty acres of the Edward Deschamps allotment, No. 783, now owned by the appellee, Avery A. Stevens, can be irrigated (R. 562). And there is no Government ditch serving the south fifty acres of said allotment now owned by the appellee, Meil C. Pierce. Mr. Pierce did use some water from

June Creek, flumed across the Pablo Feed Canal and turned into a draw where he was able to capture part of the water, but that flume was taken out eight or ten years ago so that the only water available to him for irrigation is from Post Creek through the McDonald-Deschamps ditch (R. 566).

None of the appellees diverted more water from Post Creek through the private ditches than was actually required to properly irrigate their respective lands, and none of the appellees unnecessarily wasted any of the waters so diverted by them.

The lands served by the McDonald-Deschamps ditch all lie above the Government B Canal, and the lands served by the Magee-Minesinger ditch (with the exception of a portion of the Thomas Wald land) all lie above the Government C. Canal, and all the customary "lost" water from the irrigation operations of the appellees is picked up by one or the other of these Government canals. The customary "lost" water from the Alexander land is picked up by Government A Canal, also known as the Pablo Feed Canal. So that none of the waters diverted by the appellees from Post Creek, to irrigate their respective lands, is wasted or squandered, and even the customary "lost" waters from their irrigation operations is recaptured. An advantageous position for all parties.

Most of the appellees paid large prices for their respective lands and each of them were influenced in purchasing their lands by reason of their understanding that the lands had free or private water rights attached, and a part of the purchase price paid in each instance was paid for the private ditch and water.

The appellee, Thomas Wald, during the administrations

of Mr. Crow and Mr. Moody, as Project Engineers, tried to and did conserve water on the project by using for irrigation purposes early in the spring of each year from Government C Canal, waters rising from springs located south and east from his land and flowing into C Canal, and otherwise flowing down the canal and out of a waste gate to become lost, and by not diverting as much water from Post Creek through the Magee-Minesinger ditch as he otherwise would have required. But during the administration of Mr. Gerharz as Project Engineer and during the present administration of Mr. Sperry as Project Engineer, Mr. Wald has not been permitted to use this water which now runs off and is lost forever (R. 586 to 589). Neither Mr. Gerharz nor Mr. Sperry denied their lack of cooperation or gave any reason for their refusal to permit Mr. Wald to use this water.

SUMMARY OF ARGUMENT

The appellees contend:

(1) That by the Treaty of 1855 with the Flathead Nation, the waters of the Reservation were reserved to the individual members of the Flathead Nation or Tribe.

(2) That each Indian who was allotted on the Reservation has a vested right, which could not be taken from him, to the use of sufficient water to irrigate his irrigable land with a priority of July 16, 1855.

(3) That the Indians and their successors are entitled to a right to use so much water as may be required to irrigate their respective allotments, prior to any rights of the holders or occupants of the surplus unallotted lands on the Reservation.

(4) That the appellees in acquiring the Indian allotments, involved in this case, with the appurtenances, have acquired whatever rights the Indians had.

(5) That the lands of the appellees require more than two acre feet of water (at the point of diversion) for the proper irrigation thereof, but that the extent or amount may not be determined in this proceeding.

(6) That the Secretary of the Interior did not act erroneously in recognizing these water rights, but that he did err in not recognizing that each individual Indian was entitled to the use of so much water as may be required to properly irrigate the whole irrigable area of their respective allotments.

(7) That water rights were allocated to each parcel of land which had been allotted to Indians in severalty by the Act of Congress of May 29, 1908 (35 Stat. 448) in an amount "as may be required to irrigate such lands." In the event that the supply of water was insufficient to furnish that amount, then the provision of the General Allotment Act requiring "just and equal distribution of the water" (25 U. S. C. A. Section 381) would be applicable.

(8) That it was and is the understanding of the Indians that the lands and waters on the Flathead Indian Reservation were reserved to them for their exclusive use and benefit by the Treaty of 1855.

(9) That the court did not have jurisdiction to grant injunctive relief.

ARGUMENT

1. *Waters reserved to individual Indians.*

The Supreme Court, in Winters vs. United States, 207

U. S. 564, 28 Sup. Ct. 207, in establishing the law that the "Indians" reserved the waters, at page 576 of the opinion, says:—

> "The reservation was a part of a very much larger tract which the Indians had the right to occupy and use, and which was adequate for the habits and wants of a nomadic and uncivilized people. It was the policy of the government, it was the desire of the Indians, to change those habits and to become a pastoral and civilized people. If they should become such, the original tract was too extensive; but a smaller tract would be inadequate without a change of conditions. The lands were arid, and, without irrigation, were practically valueless."

Winters vs. United States,
207 U. S. 564, 28 Sup. Ct. 207.

And the opinion of this Court in the decision appealed from reads, in part:—

> "We are of the opinion that it was the intention of the treaty to reserve sufficient waters of Milk River, as was said by the Court below 'to insure to the Indians the means wherewith to irrigate their farms', and that it was so understood by the respective parties to the treaty at the time it was signed."

Winters vs. U. S., 143 Fed. 743, 746.

It must be noted that in these opinions "Indians" and not "tribe of Indians" are mentioned. Nowhere is it stated that the "tribe" retained the right to use the waters of Milk River.

This Court, in the case of U. S. v. Conrad Investment Company, 156 Fed. 123, at page 127, says:—

> "The government has the legal title, and, while it may be said to hold the lands in trust for the Indians who are in the occupancy thereof for permanent homes (Act Congress May 1, 1888, c. 213, 25 Stat. 113), yet it is their guardian and protector, and is bound by the

policy it has adopted and long maintained towards them to conserve their rights and interests until released from guardianship; it being designed that eventually its release shall come through allotments in severalty in pursuance of the general allotment act of February 8, 1887 (24 Stat. 388, c. 119.)''

And at page 129:

''. . . The lands being arid, the need of water is manifest, and so it must be considered that it was likewise designed that the Indians should have and enjoy the use of water in available streams wherever their needs might require, . . . And Major Dare, the agent in charge, tells us that about 90 percent of the Indians on the reservation have taken up separate settlements. This denoted progress in the way of the government's policy, and gives promise that its full hopes may yet be realized. Manifestly, the Indians cannot be expected to acquire water rights to any considerable extent through prior appropriation, because they are not far enough advanced in the art of agriculture to reduce the water to a continuous use, and the water of the public streams that they shall finally need depends largely upon their progress in this art. The government, however, being their guardian, has a most important trust to perform in this relation; that is, so to conserve the waters of such streams as traverse or border the reserve as to supply the Indians fully in their probable, or, I might say, even possible future needs, when they have ultimately secured their allotments in severalty.''

In the entire opinion no reference is made to the right of the Indians as a ''tribe'' to any water on the reservation.

In Conrad Inv. Co. v. U. S., 161 Fed. 829, 831, the Court in commenting upon its decision in the Winters case said:—

''That the United States, by treaties with the Indians on the reservation, had impliedly reserved the waters of Milk River for the benefit of the Indians on the reservation to the extent reasonably necessary to enable them to irrigate their lands, and that the 'set-

> tlers on public lands outside of the reservation could not acquire . . . the right to divert the waters of Milk river to the prejudice of the rights of the Indians residing upon that reservation'."

No reference was made to the rights of the Indians as a tribe.

In Skeem v. United States, 273 Fed. 93, no mention is made of any rights of the tribe. Only rights of individual Indians were considered.

The same is true of U. S. v. Parkins, 18 Fed. (2d) 642; U. S. v. Hibner, 27 Fed. (2d) 909 and Scheer v. Moody, 48 Fed. (2d) 327.

The Winters case holds that the waters were reserved for use on the arid lands of the reservation so that the Indians could make their living as an agricultural and pastoral people; and that without irrigation these lands were valueless.

It was not contemplated that the agricultural and pastoral pursuits should be carried on as a tribe, or that there should be any communistic farming. On the contrary, the treaties provide that the lands should be allotted in severalty.

Prior to the enactment of the allotment acts, the Indians held tribal land in common. No individual Indian had a right to any particular property, and hence he had no right to any particular quantity of water. He had no right to alienate any property because he had no ownership in severalty; and when he died, his rights in the lands, the waters, and the occupancy and use of both ceased, for the reason that no member held title to a particular described piece of land.

The General Allotment Act of February 8, 1887, (24 Stat. 388, 25 U. S. C. A. 381) provided for the allotting of the lands of the Reservation among the Indians in severalty, and the same Act provided that where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior is authorized to prescribe rules and regulations to secure a just and equal distribution of water among the Indians residing on said reservation. Certainly a distribution to the individual Indian was intended and not a distribution to the tribe as a whole.

2. *Vested Rights.*

In negotiating the Treaty, the Government requested and the Indians agreed to give up a life of hunting and fishing, wherein a large undivided tract was necessary, and to accept a smaller reservation wherein they were to change their mode of living to that of an agricultural and pastoral people. The Winters case holds that even though water was not mentioned in the Treaty, there was an implied agreement that the water, necessary to permit the Indians to adopt the new mode of living, was reserved to them. No other construction of the Treaty could be possible. By the Treaty, the land and the water were reserved to the Indians with the promise that the Indian could make a selection of the land he desired to farm as an individual and the Government promised to cause the agricultural lands to be properly surveyed, allotments made to the Indians in severalty, and to issue patents therefor.

The survey was made, the allotments made and patents issued. The Indian was given his allotment so that he might farm for himself, become an individualist and adopt an ag-

ricultural and pastoral life. If it was the intention of the Treaty to reserve the water so that the Indians could make a living as farmers, then, when the Indian was given his individual land, how could he be expected to make his living on this arid land without the water to permit him to lead this pastoral and agricultural existence. Certainly he was given the water with the land. It was the policy of the Government that when the Indians received their allotments, that they should become irrigation farmers.

This Court, in the McIntire case, said this:—

> "The waters of Mud Creek were impliedly reserved by the treaty to the Indians. Winters v. United States, 207 U. S. 564, 577; United States v. Powers (C.C.A. 9), 94 F. (2d) 783, 785, and cases cited. The United States became a trustee, holding the legal title to the land and waters for the benefit of the Indians. Minnesota v. Hitchcock, 185 U. S. 373, 387."

U. S. v. McIntire, 101 F (2d) 650.

Judge Pray, in his decree made in the Powers case, said this:—

> " . . . that the Crow Indians in their treaty with plaintiff of May 7, 1868, reserved the right to the use of the waters of Little Big Horn River, Lodge Grass Creek and their tributaries to the extent necessary to (275) irrigate all lands on the Crow Indian Reservation which are irrigable from said streams or any of them; that the rights so reserved have continued to exist against the United States and in favor of individual Indians and their grantees and successors in interest . . . ."

U. S. v. Powers, 16 Fed. Supp. 155.

And this Court in the same case, in affirming the decision of Judge Pray, stated as follows:—

> "The Crow Indian Reservation was established by a

> treaty between appellant and the Crow Indians (dated May 7, 1868) (15 Stat. 649). There was in the treaty no express reservation of water for irrigation or other purposes. There was, however, an implied reservation. Winters v. United States, 207 U. S. 564, 575. The implied reservation was to the Indians, not to appellant. Skeem v. United States (C. C. A. 9), 273 F. 93, 95; Conrad Investment Co. v. United States (C. C. A. 9), 161 Fed. 829, 831; Winters v. United States (C. C. A. 9), 143 F. 740, 745; affirmed in 207 U. S. 564."
>
> U. S. v. Powers, 94 F. (2d) 783.

And the Supreme Court of the United States, in the same case, stated:—

> "Respondents maintain that under the Treaty of 1868 waters within the Reservation were reserved for the equal benefit of tribal members (Winters v. United States, 207 U. S. 564) and that when allotments of land were duly made for exclusive use and thereafter conveyed in fee, the right to use some portion of tribal waters essential for cultivation passed to the owners. The respondents' claim to the extent stated is well founded."
>
> U. S. v. Powers, 59 Sup. Ct. 344.

The right to the water was retained by the Indians in the Treaty of July 16, 1855. The water was for use on the lands of the reservation, to make it an agricultural and pastoral country. When the land was allotted to the individual Indian, the water, following the intention of the Treaty as construed by the Winters case, went with the land to the individual Indian. When the patent was issued it simply gave legal form to the rights which were contained in the Treaty and confirmed by the allotments and the subsequent action of the Government. The water became appurtenant to the land when the Indian received his allotment. It is significant that the patents make no attempt to reserve the

water, although they do reserve other rights which the United States intended to retain (R. 489). The Government patents for these lands convey the same "together with all the rights, privileges, immunities and appurtenances, of whatsoever nature, thereunto belonging." In the patents there is a reservation for right of way of canals constructed by the authority of the Government, but no specific reservation of water rights. In the later deeds of conveyance, no reservation of water was made. The rights which were appurtenant to the land were conveyed by both the patent and the later deeds of conveyance. These appellees have all the rights of the original patentees.

Kofoed v. Bray, 69 Mont. 78, 220 Pac. 532.

McDonald v. Lannen, 19 Mont. 78, 47 Pac. 648.

Sloan v. Glancy, 19 Mont. 70, 47 Pac. 334.

Once these rights have been conferred upon the Indian, neither the Secretary of the Interior, the Commissioner of Indian Affairs nor Congress can abrogate or take them away.

> "It is conceded that no right which was actually conferred on the Indians can be arbitrarily abrogated by Statute."
>
> Choate v. Trapp, 224 U. S. 665, 674—32 Sup. Ct. 565.
>
> "There is a broad distinction between power to abrogate a statute and to destroy rights under it; and, while Congress under its plenary power over Indian tribes can amend or appeal an agreement by a later statute, it cannot destroy actually existing individual rights of property acquired under a former statute or agreement."
>
> (Syllabus 1.)
>
> "Indians are not excepted from the protection guar-

anteed by the Federal Constitution, but their rights are secured and enforced to the same extent as those of other residents or citizens of the United States." (Syllabus 10.)

Choate v. Trapp, 224 U. S. 665, 32 Sup. Ct. 565.

In the case of Morrow v. U. S., 243 Fed. 854, 856, the Circuit Court of Appeals for the 8th Circuit says:

> "There is no question that the government may, in its dealings with the Indians, create property rights which, once vested, even it cannot alter. Williams v. Johnson, 239 U. S. 414, 420, 36 Sup. Ct. 150, 60 L. Ed. 358; Sizemore v. Brady, 235 U. S. 441, 449, 35 Sup. Ct. 135, 59 L. Ed. 308; Choate v. Trapp, 224 U. S. 665, 32 Sup. Ct. 565, 56 L. Ed. 941; English v. Richardson, 224 U. S. 680, 32 Sup. Ct. 571, 56 L. Ed. 949; Jones v. Meehan, 175 U. S. 1, 20 Sup. Ct. 1, 44 L. Ed. 49; Chase v. U. S., 222 Fed. 593, 596, 138 C. C. A. 117. Such property rights may result from agreements between the government and the Indian. Whether the transaction takes the form of a treaty or of a statute is immaterial; the important considerations are that there should be the essentials of a binding agreement between the government and the Indian and the resultant vesting of a property right in the Indian."

The right of the Indian to the use of the water would seem to be a vested legal right, because it rested on the solid basis of a binding agreement which has been fully executed. This agreement was the agreement of the Government with the Indian, as expressed in the Treaty of July 16, 1855, as interpreted by the Winters case, wherein the Government agreed, in consideration of the relinquishing of the remainder of the territory, to allot, in severalty, a portion of the remaining lands on the reservation to the individual members of the tribe.

Circuit Judge Sanborn, on the same subject of vested rights of an Indian, said:

> "If by the treaty of 1865 a substantial right in or title to the land in question was granted to or vested in Clarissa Chase and her heirs, the subsequent act of Congress of 1882 was ineffective to impair or destroy that right or title because; First, Indians as well as other residents and citizens of the United States are protected by the fifth amendment to the Constitution against deprivation of property, life, or liberty without due process of law. No act of Congress or legislative fiat constitutes due process of law, whereby a vested right in or title to property may be either seriously impaired or destroyed. Choate v. Trapp, 224 U. S. 665, 670, 677, 32 Sup. Ct. 565, 56 L. Ed. 941; Jones v. Meehan, 175 U. S. 1, 20 Sup. Ct. 1, 44 L. Ed. 49; In re Heff, 197 U. S. 488, 504, 25 Sup. Ct. 506, 49 L. Ed. 848; Cherokee Nation v. Hitchcock, 187 U. S. 294, 307, 23 Sup. Ct. 115, 47 L. Ed. 183; Jackson v. Goodell, 20 Johns, (N. Y.) 188; Lowry v. Weaver, 4 McLean 82, Fed. Cas. No. 8, 584; Whirlwind v. Vonder Ahe. 67 Mo. App. 628; Taylor v. Drew, 21 Ark. 485, 487."

> Chase v. U. S., 222 F. 593, 596; reversed by U. S. v. Chase, 245 U. S. 89, 62 L. Ed. 89, 38 Sup. Ct. 24.

> "It is conceded that no right which was actually conferred on the Indians can be arbitrarily abrogated by Statute."

> Choate v. Trapp, 224 U. S. 665, 674, 56 L. Ed. 941, 32 Sup. Ct. 565.

The U. S. District Court of Montana in the case of United States v. Heinrich, 12 F. (2d) 938, 939, in a case where many of the same questions were involved, held:

> "Such patents as were issued here would, without doubt, include the water and ditch rights appurtenant to the land, although not expressly mentioned therein. Brewer-Elliott Oil & Gas Co. v. United States, 260 U. S. 77, 43 S. Ct. 60, 67 L. Ed. 140; Hardin v. Jordan, 140 U. S. 371, 11 S. Ct. 808, 838, 35 L. Ed. 428; Packer

v. Bird, 137 U. S. 661, 11 S. Ct. 210, 34 L. Ed. 819; Smith v. Denniff, 23 Mont. 65, 57 P. 557, 50 L. R. A. 737; Tucker v. Jones, 8 Mont. 225, 19 P. 571; McDonald v. Huffine, 44 Mont. 411, 120 P. 792.

"Rights are said to be vested when the right to enjoyment, present or prospective, has become the property of some particular person or persons as a present interest. Pearsall v. Ry. Co., 161 U. S. 646, 675, 16 S. Ct. 705, 40 L. Ed. 838. 'A vested right is an immediate right of present enjoyment, or a present, fixed right of future enjoyment.' 4 Kent, Comm. 202.

"An Indian's 'right of private property is not subject to impairment by legislative action, even while he is, as a member of a tribe, subject to the guardianship of the United States as to his political and personal status.' Choate v. Trapp, 224 U. S. 665, 32 S. Ct. 565, 56 L. Ed. 941.

"Titles confirmed many years before by the authorized agents of the government may not be nullified, and rights created by carrying a statute into effect cannot be devested or impaired. Gritts v. Fischer, 224 U. S. 640, 32 S. Ct. 580, 56 L. Ed. 928; Reichert v. Felps, 6 Wall, 160, 18 L. Ed. 849; Sizemore v. Brady, 235 U. S. 441, 35 S. Ct. 135, 59 L. Ed. 308; U. S. v. Rowell, 243 U. S. 464, 37 S. Ct. 425, 61 L. Ed. 848. Otherwise, where nothing had been done by officers of the government under prior act, and matter remained executory, and no vested right had attached at the time of approval of later act. U. S. v. Stockslager, 129 U. S. 470, 9 S. Ct. 382, 32 L. Ed. 785. No act of Congress or legislative fiat constitutes due process of law, whereby a vested right in or title to property may be either seriously impaired or destroyed. Chase v. United States, 222 F. 593, 138 C. C. A. 117."

United States v. Heinrich, 12 F. (2d) 938.

3. *Indians and Successors Entitled to First Use of Water.*

From the foregoing, it has been conclusively shown that the Indian allottees were and are entitled to use a sufficient

amount as may be required to irrigate their lands, prior to any rights of the holders or occupants of the surplus unallotted lands on the reservation. The waters were reserved to the individual Indians. The right to use a sufficient amount of water became a vested right which cannot be taken away from him. The original plan of the Government project called for the irrigation of 152,000 acres (R. 479). We are told that the present plan calls for the irrigation of 138,000 acres (R. 222). We are also told that in 1938 there were 76,000 acres in the project under irrigation. This figure includes both Indian allotments and farm units, or surplus unallotted lands, but not the 8,000 acres irrigated under the so-called Secretarial Water Rights. The whole irrigable area of all Indian allotments is about 70,000 acres (R. 239). We are also told that in 1935 there was a serious shortage of water and that crops burned up for a lack of water, and that there never has been a sufficient amount of water available to properly irrigate all of the acres under irrigation (R. 457-458). The only additional water to be available will be derived from the Polson Pumping Plant—enough to irrigate a few thousand additional acres (R. 219). At the present time there is just about enough water available to irrigate the Indian allotments. Where does the water come from that is used to irrigate the farm units or surplus unallotted lands? It comes from the Indians, of course. If the Government extends the project to include a total of 138,000 acres, as they say they plan to do, where is the water coming from to irrigate this additional 62,000 acres? It will come from the waters owned by the Indians, of course. In other words, the Indians and their successors in interest are being divested of their vested rights.

We seriously urge that each irrigable acre of the Indian allotments, whether still in the ownership of the Indians or their successors, is entitled to a sufficient amount of water to properly irrigate it. If any water remains after the Indian allotments have received their required amount, then such surplus water might be used to irrigate other lands, but not before.

Section 7 of the General Allotment Act of 1887 (24 Stat. 388, 25 U. S. C. A. 381) reads as follows:

> "That in cases where the use of water for irrigation is necessary to render the lands within any Indian reservation available for agricultural purposes, the Secretary of the Interior be, and he is hereby, authorized to prescribe such rules and regulations as he may deem necessary to secure a just and equal distribution thereof among the Indians residing upon any such reservation; and no other appropriation or grant of water by any riparian proprietor shall be authorized or permitted to the damage of any other riparian proprietor."

In the case of U. S. v. Powers, 305 U. S. 527, 59 Sup. Ct. 344, the Supreme Court said:—

> "The Secretary of the Interior had authority (Act 1887) to prescribe rules and regulations deemed necessary to secure just and equal distribution of waters. It does not appear that he ever undertook so to do. Certainly he could not affirmatively authorize unjust and unequal distribution. The statute itself clearly indicates Congressional recognition of equal rights among resident Indians.
>
> "Adoption by the Secretary of plans for irrigation projects to serve certain lands was not enough to indicate a purpose to exclude all other land from participation in essential water and thereby destroy the equal interest guaranteed by the Treaty. Subsequent allotments for farming followed by patents negative any such notion. The patented lands had no value for ag-

riculture without water; they were selected for homes and individual farming."

That it was the intention of the Government in constructing the present irrigation project to so construct the same so as to irrigate the Indian allotments, not already under private irrigation development, and to deliver the required amount of water necessary for properly irrigating such Indian allotments prior to irrigating any of the farm units or surplus unallotted lands, is clearly demonstrated by the notice by James W. Witten, Superintendent of Opening and Sale of Indian Reservations, contained in the Amended Schedule of Lands in the Flathead Indian Reservation (Exhibit 33) (R. 489), which was a notice to all applicants for entry on the surplus unallotted lands or farm units. A portion of which notice is quoted herewith:

> "The Government is now constructing irrigation works from which the farm units will be irrigated as far as possible, but it cannot at this time be told what part or how much of any particular unit can be furnished with water. It is probable that water can be furnished to only a small portion of some of these units, and it is possible that there will be no water at all for some of them, nor can it be told now when the water will be ready for any of these units, as the development of the irrigation projects has not yet proceeded far enough to enable the giving of definite information on this subject at this time. All applicants must bear this fact in mind and make their selections accordingly, as they will act on their own responsibility and without any guarantee from the Government, and the fact that water has not or cannot be furnished will not excuse any entryman from a full compliance with the requirements of the law as to residence, cultivation, and the payment of the Indian price."

This right of the allottees and their successors in interest has been recognized by the Government, the Secretary of

the Interior, the Commissioner of Indian Affairs and all other persons interested, ever since the making of the Treaty of 1855 until this action was commenced. As was said in the Powers case, 305 U. S. 527, 59 Sup. Ct. 344:—

> "We can find nothing in the statutes after 1868 adequate to show Congressional intent to permit allottees to be denied participation in the use of waters essential to farming and home making. If possible, legislation subsequent to the Treaty must be interpreted in harmony with its plain purposes."

4. *Appellees Acquired Indian Rights.*

The Indian allottee has a right to the use of sufficient water to irrigate his irrigable land. That right is appurtenant to the land. Upon allottment, the Indian became vested with all the rights incident to ownership, of both the lands and water, under the Treaty with a priority of July 16, 1855. When the Indian sold his land, he sold all of his interest in the land which included the water. The purchaser of the land secured all of the right of the Indian in and to the land and the water. A very lucid and a correct statement of the law is found in United States v. Hibner, 27 Fed. (2d) 909, as follows:

> "This question is not free of difficulty, for it presents for consideration what is the status of the water rights of those who have acquired by purchase their lands from the Indians whose rights were reserved unto them, and who became vested with all the rights incident to ownership of both the lands and water under the treaties, with a priority of February 16, 1869. The right of the Indians to occupy, use, and sell both their lands and water is now recognized, as this view is sustained in the case of Skeem v. U. S., supra, and, such being the case, a purchaser of such land and water right acquires, as under other sales, the title and rights held by the Indians, and that there should be awarded

to such purchaser the same character of water right with equal priority as those of the Indians."

This Court, in deciding upon a Montana case, held that the water rights became appurtenant to the Indians' allotments and could be sold with the land:—

"That these ditches and water rights are private property is clear. The ditches were built by and for Indians and for the lands in suit, and the water by these ditches conveyed was upon these lands used. Thus appropriated, ditches and water rights became appurtenant to the Indians' allotments, and like the allotments themselves, their property in severalty. And as such, they could as they did convey them to plaintiffs."

Scheer v. Moody, 48 F. (2d) 327, 330.

See also:

U. S. v. Powers, 94 Fed. (2d) 783.

5. *Appellees' Lands Require More Water.*

The appellees contend that their lands required more than two acre feet per acre to properly irrigate them.

The appellants offered testimony to show that the appellees were actually using more than two acre feet per acre, but the undisputed evidence also shows that the appellees were not unnecessarily wasting or squandering any water. Is that not proof then, that these lands do require more than two acre feet, or that more than two acre feet can be beneficially used on appellees' lands?

There are over 300 so-called Secretarial Water Rights on the reservation (R. 596), and about 70,000 acres of irrigable Indian allotments, part of which is still held by the Indians and part of which is now owned by white people. Each irrigable acre of the allotted land is entitled to its pro-rata share of the available water, at least to the amount re-

quired to properly irrigate it. If sufficient water is not available, then the Secretary may "prescribe rules and regulations" to secure a just and equal distribution among the Indians. Certainly he cannot authorize unjust and inequal distribution. Neither can he nor the Government take this water, that is sorely needed to irrigate allotted lands, away, and use it to irrigate other lands under the project, thus destroying vested rights.

But it was not possible to determine such pro rata share in this action. The issues were not framed to that end. To adjudicate the amount would require the presence in the action of all holders of allotments in the Mission Valley Division.

6. *The So-Called Secretarial Water Rights.*

In the Bill of Complaint of the United States it was alleged (R. 10):—

> "That pursuant to the aforesaid Acts of Congress of June 21, 1906 and May 29, 1908 on November 25, 1921 the Secretary of the Interior granted a valid and subsisting water right from Post Creek to 16.8 acres of the above described tract, formerly known as the Duncan McDonald allotment No. 561, to the extent of two (2) acre feet of water per acre per annum, or a total of 33.6 acre feet per annum."

A similar allegation except as the number of acres, was made with respect to each of the Indian allotments involved in this action. Evidence was introduced in support of such allegations on behalf of the United States (R. 275-323). In the lower court the action was tried on behalf of said appellant on the theory that the so-called Secretarial Decree granted valid and subsisting water rights but now, on appeal, the Government, in its brief at page 8, states that:—

> "It does not rely upon the 'Secretarial Decrees' and makes no attempt to sustain their validity. It contends, on the contrary, that all irrigable lands on the Flathead Indian Reservation, whether alloted or surplus, have equal water rights and that all diversions whether from Government or private ditches are to be administered by the project engineer."

Appellees regard the position taken by the Government as a violation of the rule which requires adherence to the theory pursued in the court below. The general rule is stated in 3 C. J. at page 718, as follows:

> "One of the most important results of the rule that questions which are not raised in the court below cannot be raised in the appellate court is that a party cannot, when a cause is brought up for appellate review, assume an attitude inconsistent with that taken by him at the trial, and that the parties are restricted to the theory on which the cause was prosecuted or defended in the court below."

See also

> San Juan Light & Transit Co. v. Belen Requena 224 U. S. 89, 32 Sup. Ct. 399.

In 1912 Edward Clairmont, a Flathead Indian, wrote to the Commissioner of Indian Affairs regarding the Indians' private ditches which they had constructed with their private funds, and stated that these private rights should be protected (Exhibit 7) (R. 271 and 481). The Commissioner of Indian Affairs and the Secretary of the Interior *agreed with him* and so the Commissioner of Indians, with the approval of the Secretary of the Interior, acting under the authority of the Acts of February 8, 1887, June 21, 1906, and May 29, 1908, appointed a Commission (Exhibit 7) to make an examination of the private water developments on the reservation and to report its findings, with recom-

mendations, as to whether and to what extent the old ditches should be taken into consideration on the question of charges for construction cost. The Commission did make an examination of such private developments and made its report, with recommendations, (Exhibits 8 and 10). The Commissioner of Indian Affairs transmitted the report to the Secretary of the Interior, who approved it on November 25, 1921 (Exhibit 9).

Appellees believe that these acts of the Commissioner of Indian Affairs and the Secretary of the Interior and these exhibits constitute a recognition, so far as it goes, on the part of the Government, of the Indians' private rights already vested; but the Secretary of the Interior should have gone further. The Indian predecessors of the appellees had constructed ditches of sufficient size and carrying capacity to irrigate the whole irrigable area of their respective allotments. The Secretary of the Interior should have recognized that fact, even though some of such Indians may not have, as early as 1909, actually applied water to the whole irrigable area of their allotments. It should be remembered that the examination of the private water developments by the Commission was made as of 1909, when the Government commenced construction of its project and that these Indians had only been allotted on October 8, 1908, although the examinations made and hearings conducted were not actually performed until some years later.

7. *The Act of Congress of May 29, 1908 (35 Stat. 448).*

A portion of this Act reads as follows:

> "The land irrigable under the systems herein provided, which has been allotted to Indians in severalty, shall be deemed to have a right to so much water as

> may be required to irrigate such lands without cost to the Indians for construction of such irrigation systems."

This is consistent with the private rights, so far as the amount goes, because "enough to irrigate" is the limit of any private right.

Whether this Act actually "granted" any rights to the Indians, which they did not already possess, depends on the meaning of the word "deemed." To deem, means to judge; to determine upon consideration. The primary meaning of the word is "to form a judgment; to conclude upon consideration."

United States v. Doherty, 27 Fed. 730.

The Supreme Court of Montana has defined the word "deemed" as follows:

> "The word 'deemed', as used in legislative expressions, has always been held to be equivalent to or synonymous with the words 'considered,' 'determined,' and 'adjudged'."

State ex rel Sinko v. District Court 64 Mont. 181-186, 208 Pac. 952.

In view of the meaning of the word "deemed," it would seem that the Act did not "grant" any new rights to the Indians but "considered," "concluded" or legally recognized the already existing rights of the Indians to the use of so much water as may be required to irrigate their lands.

This Court in the McIntire case (101 Fed. (2d) 650) said in part:

> "The only provision regarding water rights pointed out is found in the Act of May 29, 1908 which provided that 'The land irrigable under the systems herein provided, which has been allotted to Indians in severalty, shall be deemed to have a right to so much water as

> may be required to irrigate such lands . . .' Thus water rights were allocated to each parcel of the irrigable land in an amount 'as may be required to irrigate such lands.' In the event that the supply of water was insufficient to furnish that amount, then the provision of the general allotment act requiring 'just and equal distribution' of the water (25 USCA 381) would be applicable."

But that language does not mean that the Court held that any new rights were "granted" to the Indians. The generally accepted meaning of the word allocate is "to distribute or assign"; "to allot."

To allot means:

> "To set apart a thing to a person as a share; to set apart a portion of a particular thing or things to some particular person; to divide or distribute as by lot; to distribute or parcel out in parts or portions, or to distribute to each individual concerned; . . . "
>
> 3 C. J. S. 887.

Circuit Judge Wolverton defined the word "allot," as follows:

> " 'Allot' is not a term of sale or grant, but of apportionment of that to which the parties are entitled as of right."
>
> Parr v. U. S., 153 Fed. 462-468.

The following is quoted from an opinion by the U. S. Supreme Court:

> "And Mr. Justice McLean, concurring, said: 'The language used in treaties with the Indians should never be construed to their prejudice.' 'To contend that the word "allotted," in reference to the lands guaranteed to the Indians in certain treaties, indicates a favor conferred, rather than a right acknowledged, would, it would seem to me, do injustice to the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than

their critical meaning, should form the rule of construction'."

Jones v. Meehan, 175 U. S. 1, 20 S. Ct. 1, 44 L. Ed. 49.

By passing the above portion of the Act of May 29, 1908, Congress ratified the Indians' private rights.

8. *Understanding of the Indians.*

It is, and always has been, the understanding of the Indians on the Flathead Indian Reservation that the lands and waters belonged to them (R. 621). They were given to understand that fact by the Treaty of 1855, and have so understood it ever since then. Soon after the Flathead Indians moved from the Bitter Root Valley to the Flathead Reservation, they began to use this water for irrigation purposes and the Government encouraged them in their endeavors (R. 617 to 621). They located close to the mountains near wood and along the streams of water (R. 612 and 617), and in the early years these Indians were encouraged to use these waters for irrigation by the Indian agents and other Government officials, and by the Jesuit Fathers who were working among the Indians as missionaries and cooperating with the Government in converting these Indians from a roaming people to irrigation farmers. As early as 1890 when Reverend Father Taelman, a missionary among the Indians, first visited the Flathead Reservation, the Indians in the Jocko Valley had built ditches and were using them (R. 620). By 1909 more than 300 Indian families had dug ditches and were irrigating portions of the lands upon which they had settled as evidenced by the number of the so-called Secretarial Decrees recognizing those early ditches (R. 596). And in this connection we invite the court's

attention and ask the court to take judicial notice of Volume 3 "Hearings by a Sub-Committee of the Committee on Indian Affairs of the House of Representatives," printed in 1920; and also the "Survey of Conditions of the Indians in the United States" by the subcommittee of the Committee on Indian Affairs of the United States Senate, printed in 1929. Both of these volumes are public documents. Attached hereto as Appendix "A" and Appendix "B" are extracts therefrom relating to the understanding of the Indians concerning their ownership of the waters on the reservation.

The lands on the Flathead Indian Reservation were recognized as the common property of the Indians of the Flathead Nation, under and by virtue of the Treaty of July 16, 1855. By virtue of that Treaty, as interpreted by the case of United States vs. Winters (207 U. S. 564, 28 Sup. Ct. 207), the use of the waters of said Reservation were reserved by the Indians for use on said land. The Government intended the individual Indians of the Flathead Nation to have a country upon which they could make a living by agricultural pursuit. Unless the water went with the land the purpose of the Treaty would be defeated. It was evident, even then, that certain lands of the Reservation were so situated that water from the streams could be run, by gravity, upon them for agricultural purposes.

Heretofore the Indians had made their livelihood by hunting and this mode of living need recognize no individual real estate rights. The buffalo and the deer roamed all of the country and the tribe had the right to pursue and take such game at any place on the common territory, and of taking fish in all the streams running through or border-

ing said Reservation. But when the habits of the Indians were to be changed to those of an agricultural and pastoral people and they were to make their livelihood by farming, it was very evident that a common ownership of the real estate must cease. If they were to become farmers and make their living from that source, it was necessary that they have lands capable of producing crops. In order to produce crops it was necessary that they have the irrigation water needed to grow the grain and food for themselves and their livestock.

The purpose of the Government was to break up the roaming tribal existence of the Indian and to make him a rugged individualist. He was to be encouraged to own his own individual property, farm his own land, and raise his own cattle. He was to take up the ways of the white man and became self supporting. The Government told him, by the Treaty of 1855, that from the common tribal lands he would be given an allotment which he was to possess and own in severalty. It was feared that, at first, he might not be capable of managing his own affairs and so the change was to be gradual and with the Government supervising his affairs until he was capable of managing himself.

Under the Treaty of 1855, the individual Indian was given the right to make a selection of the land he wanted. In due time a survey was to be made of the Reservation and he was to be allotted the land chosen by him, unless his selection conflicted with the rights of others. And, later, a trust patent was to be issued to him, designating the lands which were his. The title to these lands was to be held by the United States for a trust period of twenty-five years, during which period the Indians should have the right of

possession, use and occupancy of the land and all the appurtenant rights. At the end of twenty-five years, a fee patent was to be granted to the Indian, making the land his absolutely. When the lands were alloted to the individual Indian, he ceased to have an interest in the common property so divided, but took the lands allotted to him in severalty.

When he had no individual lands he had no use for individual water. When he took a parcel of ground, which was capable of irrigation, he had need for individual water for that land. The irrigable land without water was valueless. The two went together. To say otherwise is to entirely defeat the policy of the Government and the intention of the Indian, as expressed in the Treaty and the Acts of Congress, and as clearly set forth in the Winters case.

Each Indian who has retained his land and the successor of each Indian who has parted with the title to his land are entitled to sufficient water to irrigate all of his land capable of irrigation; if there was not sufficient water to irrigate all of his irrigable lands, each would then be entitled to his pro rata share of the available water. Neither the Congress nor the Secretary of the Interior nor the Commissioner of Indian Affairs could deprive any Indian or his successor of his portion of the available water. Each had a vested right, which could not be legally taken from him, to the use of sufficient water to irrigate his irrigable land.

9. *Court Did Not Have Jurisdiction to Grant Injunctive Relief.*

In the brief of appellants, Flathead Irrigation District and Dennis A. Dellwo, at page 47 it is stated that:

"It is a fair inference that substantially all of the

water users conform to the government's rules limiting each user to his proportion of the water available each year."

From the entire record a more fair and stronger inference is that the Indians and whites using free water under the so-called "secretarial decrees" and numbering over 300 are not limiting the amount of water used by them to the two acre feet for the specific number of acres designated in the "secretarial decree" nor to the amount designated by the project rules but, on the contrary, are using a sufficient amount of water to properly irrigate the entire irrigable acreage of their respective farms.

Appellees do not believe that the lower court erred in making the findings of fact complained of. The Court did not attempt to define the rights of the parties to the extent of adjudicating the exact amount of water the appellees are entitled to use but only made such findings as were necessary to enable the court to conclude that the appellants were not entitled to injunctive relief under the facts and to conclude that the complaint and complaint in intervention should be dismissed without prejudice, due to a lack of indispensable parties. It is conceded that there are a large number of users of water on the Flathead Indian Reservation, including Indians, successors to Indians and homesteaders, part of whom are located within the Flathead Irrigation Project and part of whom are located without the ambit of the Project. We submit that each of these water users is one who has such an interest in the subject-matter of the controversy that a final decree between the parties before the court cannot be made without injuriously affecting his interests or leaving the controversy in such a situa-

tion that its final determination will be inconsistent with equity and good conscience and is, therefore, an indispensable party.

The absence of indispensable parties compels the abatement of a suit in the Federal courts.

O'Neil v. Wolcott Mining Co., 174 Fed. 527.
State of Washington v. U. S., 87 Fed. (2d) 421.
U. S. v. Powers, 94 Fed. (2d) 783, 305 U. S. 527, 57 S. Ct. 344.

Accordingly, it is respectfully submitted that the judgment appealed from should be affirmed.

LLOYD I. WALLACE,
Attorney for Appellees.

APPENDIX "A"

Committee on Indian Affairs, House of Representatives,

Dixon, Mont., Tuesday, June 1, 1920.

The subcommittee met at 8:30 o'clock a. m., Hon. Homer P. Snyder (chairman) presiding.

The Chairman. This hearing here today is called as a continuation of hearings held pursuant to section 28 of the Indian appropriation bill for the fiscal year ending June 30, 1920, which authorized the Committee on Indian Affairs to make an investigation not only of the bureau at Washington, but its connections with the field, empowering the committee to swear witnesses, subpoena persons, and in any way legally conduct the investigation to get such information as may be required to make recommendations to Congress at its next session. In view of that, Mr. Sharp is called as the first witness.

STATEMENT OF MR. MARTIN CHARLO

The Chairman. What is your name and whom do you represent. What tribe of Indians do you represent?

Mr. Charlo. (interpreted by Max J. Barnaby). Martin Charlo. I represent the Flathead Nation of Indians and the chiefs.

The Chairman. You are here to make a statement of conditions?

Mr. Charlo. Yes, sir.

The Chairman. We will give you 10 minutes to make a statement in your own way.

Mr. Charlo. I have protests to make against the conditions of my water rights. I am paying for water that I do not get any benefit from. Several Indian members of the tribe have had their money taken away from them for supposed water charges. That is a point of view that is not right. The previous water that was my private water right has been taken away from me and I am being charged for the same. The Reclamation Service cut into my ditch and diverted my stream of water into the canal and is charging me for that same water. A treaty was made with me by

the white men that I was to have this water, and in that treaty I was given to understand that the water was mine. All the waters within the boundaries of the Flathead Reservation were to belong to me. I am sure that was the agreement made at that time.

I would like relief to get these water rights straightened out. At this time I have no water for my crops and am being charged for water I do not get on the crops, and the pro rata share of my money has been taken to pay for the supposed water charges. This statement I am making is true to the best of my knowledge.

APPENDIX "B"

SURVEY OF CONDITIONS OF THE INDIANS IN THE UNITED STATES

Monday, July 29, 1929, Tuesday, July 30, 1929.

United States Senate

Subcommittee of the Committee on Indian Affairs.

St. Ignatius, Montana.

The subcommittee met pursuant to call at 2 o'clock p. m. in the Indian Hall at St. Ignatius, Mont., Senator Lynn J. Frazier, presiding.

Present: Senators Frazier (chairman), Wheeler, and Pine.

Present also: Mr. J. Henry Scattergood, Assistant Commissioner of Indian Affairs; Congressman Evans, of Montana; John Collier, secretary of the American Indian Defense Association (Inc.); and Mr. Nelson A. Mason, clerk of the committee.

The subcommittee proceeded under S. Res. 79, Seventieth Congress.

Senator Wheeler. They claim they have 120,000 acres under the irrigation system. The records show that but 33,000 are irrigated. They admit that they have a gravity flow for 80,000 acres, or over twice the acreage now in irrigation, yet for the past 15 years they have advocated a large addition to the system and propose a plan to pump water at an elevation of 325 feet through the Newell Tunnell and confiscate the tribal ownership of its power site. What do you know about that?

Mr. Lemery. It is not feasible or practical in any sense. Too much money has already been spent on the irrigation project which is of no practical use. The Indians protested from the beginning against the irrigation plan and are still protesting against it, and they maintain that the land has been practically confiscated by liens assessed against it over a period of years by reason of the irrigation system, and there are not 750 acres under the whole irrigation project that is irrigated by Indians and many thousand of

acres have been abandoned without anything growing on it. We charge that the Indian Bureau has through all these years misled Congress in all of these matters, otherwise Congress would have abandoned it years ago. It is ruining the Indians and threatening the destruction of the Flathead Valley. The construction charges, cost of maintenance, and other operations are so high now that it is impossible to raise enough on the land to pay for the water, and the accumulated charges are more than the land is worth. Land values are not high out here. I had an Indian tell me the other day that he had a quarter he was trying to sell for $1,600; it has five or six hundred dollars' worth of buildings on it. The main ditch runs right through his land, but he cannot get any bidders, as no one wants to assume the burden of these charges assessed against the land and the purchaser would not have a good, clear title unless these liens against the land were paid. There are a great many ditches under the irrigation project that were built and never used—you go right by one on the road to this place. I don't know just how many miles of ditches and laterals were built and never used, but there are a good many, and they are building some more.

Before the Government ever started the irrigation project the Indians had their own irrigation system and the Government came in and took those irrigation ditches over and appropriated the water and tore up some of the ditches used by the Indians and then they turned around and charged the Indians the same as anybody else for using water. It was our understanding that we had the water to begin with, but by an act of Congress they took it away from us and turned it over to the Reclamation Service. I heard of cases like that, too, up in the Jocko district. Some of these men here today know more about that than I do and can explain it better than I can. I had a ditch of my own, too. Frank Gilkey helped me build it before the irrigation project was ever started; when they came in here and built the big ditch they wanted to cut me out of the water and I would not stand for it. They let me use the water for a while, but finally they cut me out and told me that if I wanted any water I would have to get it out of the big ditch and pay for it. A year after that the ditch rider

came out and I had some words with him. Finally he left the gate open, but they afterwards closed it and Mr. Moody promised that he would do what he could to see that I got water, but I have not got it yet. The irrigation project took all the ditches the Indians had and used their land for reservoir sites and they have not paid a cent for it, unless they have done it lately and I don't believe they have, and if the Indians wanted any water they had to pay for it the same as anyone else.

Under the treaty of 1855 the Flathead Tribe gave up the Bitter Root Valley and they were given all of the land on the Flathead Reservation to hold for all time for the use of the Flathead Tribe, and it was our understanding that that included the water rights. Later the Government came in and took the water away from us. We were not in favor of this project from the beginning, and protested against it, but they came in and put it in anyway, and they promised us at the time that the Indians would never be charged anything for the water; now we are taxed water rent, construction charges, and everything else. The charges are so high that enough cannot be produced on the land to pay them, and it has caused a great deal of dissatisfaction among the Indians, and many of them are in very poor circumstances, and have a hard time to get along, as many of them have lost their land. There are very few of the old long-haired Indians farming on the reservation. A few of the middle aged long-haired Indian are, but not many. Mr. Bullhead, there, is a man about 60. He is farming and is a very good farmer, too. I am not a full blood myself. I am a quarter breed. . . . . .